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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JOYCE CABALONA, individually and)	Case No.
on behalf of all others similarly)
situated,	) <u>CLASS ACTION</u>
)
Plaintiff,	) COMPLAINT FOR VIOLATIONS
	) OF:
vs.)
	) 1. NEGLIGENT VIOLATIONS OF
	) THE TELEPHONE CONSUMER
	) PROTECTION ACT [47 U.S.C.
ALL ABOUT THE BABY	) §227 ET SEQ.]
ENTERPRISES LLC,	) 2. WILLFUL VIOLATIONS OF THE
	) TELEPHONE CONSUMER
	) PROTECTION ACT [47 U.S.C.
Defendant.	) §227 ET SEQ.]
)
	) <u>DEMAND FOR JURY TRIAL</u>
)
)
)

Plaintiff, Joyce Cabalona (“Plaintiff”), individually and on behalf of all
others similarly situated, alleges the following upon information and belief based

upon personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action for herself and others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of All About The Baby Enterprises LLC (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection Act, *47 U.S.C. § 227 et seq.* (“TCPA”), thereby invading Plaintiff’s privacy.

JURISDICTION & VENUE

2. Jurisdiction is proper under *28 U.S.C. § 1332(d)(2)* because Plaintiff, a resident of California, seeks relief on behalf of a Class, which will result in at least one class member belonging to a different state than that of Defendant, a company with its principal place of business and State of Incorporation in Delaware. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

3. Venue is proper in the United States District Court for the Northern

1 District of California pursuant to *18 U.S.C. 1391(b)* and *18 U.S.C. § 1441(a)*
2 because Defendant does business within the state of California and Plaintiff
3 resides within this District.
4

5 **PARTIES**

6 4. Plaintiff, JOYCE CABALONA (“Plaintiff”), is a natural person
7
8 residing in San Bruno, California and is a “person” as defined by *47 U.S.C. § 153*
9 *(10)*.
10

11 5. Defendant, ALL ABOUT THE BABY ENTERPRISES LLC
12 (“Defendant”), is a nationwide online seller of maternity and baby products and is
13 a “person” as defined by *47 U.S.C. § 153 (10)*.
14

15 **FACTUAL ALLEGATIONS**

16 6. Beginning in or around October of 2014, Defendant contacted
17 Plaintiff on Plaintiff’s cellular telephone number ending in -3671, in an effort to
18 sell or solicit its services. Defendant contacted or attempted to contact Plaintiff
19 from telephone number (858)401-7944.
20

21 7. Defendant used an “automatic telephone dialing system”, as defined
22 by *47 U.S.C. § 227(a)(1)* to place its daily calls to Plaintiff seeking to sell or
23 solicit its business services.
24

25 8. Defendant’s calls constituted calls that were not for emergency
26 purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.
27
28

1 Defendant within the four years prior to the filing of this Complaint.

2 13. Defendant, its employees and agents are excluded from The Class.
3 Plaintiff does not know the number of members in The Class, but believes the
4 Class members number in the thousands, if not more. Thus, this matter should be
5 certified as a Class Action to assist in the expeditious litigation of the matter.
6

7
8 14. The Class is so numerous that the individual joinder of all of its
9 members is impractical. While the exact number and identities of The Class
10 members are unknown to Plaintiff at this time and can only be ascertained
11 through appropriate discovery, Plaintiff is informed and believes and thereon
12 alleges that The Class includes thousands of members. Plaintiff alleges that The
13 Class members may be ascertained by the records maintained by Defendant.
14

15
16 15. Plaintiff and members of The Class were harmed by the acts of
17 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
18 and Class members via their cellular telephones thereby causing Plaintiff and
19 Class members to incur certain charges or reduced telephone time for which
20 Plaintiff and Class members had previously paid by having to retrieve or
21 administer messages left by Defendant during those illegal calls, and invading the
22 privacy of said Plaintiff and Class members.
23
24
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26 16. Common questions of fact and law exist as to all members of The
27 Class which predominate over any questions affecting only individual members
28

1 of The Class. These common legal and factual questions, which do not vary
2 between Class members, and which may be determined without reference to the
3 individual circumstances of any Class members, include, but are not limited to,
4 the following:
5

- 6 a. Whether, within the four years prior to the filing of this
7 Complaint, Defendant made any call (other than a call made
8 for emergency purposes or made with the prior express
9 consent of the called party) to a Class member using any
10 automatic telephone dialing system or any artificial or
11 prerecorded voice to any telephone number assigned to a
12 cellular telephone service;
- 13 b. Whether Plaintiff and the Class members were damages
14 thereby, and the extent of damages for such violation; and
- 15 c. Whether Defendant should be enjoined from engaging in such
16 conduct in the future.

17 17. As a person that received numerous calls from Defendant using an
18 automatic telephone dialing system or an artificial or prerecorded voice, without
19 Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of
20 The Class.

21 18. Plaintiff will fairly and adequately protect the interests of the
22 members of The Class. Plaintiff has retained attorneys experienced in the
23 prosecution of class actions.

24 19. A class action is superior to other available methods of fair and
25 efficient adjudication of this controversy, since individual litigation of the claims
26 of all Class members is impracticable. Even if every Class member could afford
27
28

1 individual litigation, the court system could not. It would be unduly burdensome
2 to the courts in which individual litigation of numerous issues would proceed.
3 Individualized litigation would also present the potential for varying, inconsistent,
4 or contradictory judgments and would magnify the delay and expense to all
5 parties and to the court system resulting from multiple trials of the same complex
6 factual issues. By contrast, the conduct of this action as a class action presents
7 fewer management difficulties, conserves the resources of the parties and of the
8 court system, and protects the rights of each Class member.
9
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12 20. The prosecution of separate actions by individual Class members
13 would create a risk of adjudications with respect to them that would, as a practical
14 matter, be dispositive of the interests of the other Class members not parties to
15 such adjudications or that would substantially impair or impede the ability of such
16 non-party Class members to protect their interests.
17
18

19 21. Defendant has acted or refused to act in respects generally applicable
20 to The Class, thereby making appropriate final and injunctive relief with regard to
21 the members of the California Class as a whole.
22

23 **FIRST CAUSE OF ACTION**

24 **Negligent Violations of the Telephone Consumer Protection Act**
25 **47 U.S.C. §227 et seq.**

26 22. Plaintiff repeats and incorporates by reference into this cause of
27 action the allegations set forth above at Paragraphs 1-21.
28

1 23. The foregoing acts and omissions of Defendant constitute numerous
2 and multiple negligent violations of the TCPA, including but not limited to each
3 and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*
4

5 24. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et*
6 *seq.*, Plaintiff and the Class Members are entitled an award of \$500.00 in
7 statutory damages, for each and every violation, pursuant to *47 U.S.C. §*
8 *227(b)(3)(B).*
9

10 25. Plaintiff and the Class members are also entitled to and seek
11 injunctive relief prohibiting such conduct in the future.
12

13 **SECOND CAUSE OF ACTION**
14 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
15 **Act**
16 **47 U.S.C. §227 et seq.**

17 26. Plaintiff repeats and incorporates by reference into this cause of
18 action the allegations set forth above at Paragraphs 1-29.
19

20 27. The foregoing acts and omissions of Defendant constitute numerous
21 and multiple knowing and/or willful violations of the TCPA, including but not
22 limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et*
23 *seq.*
24

25 28. As a result of Defendant's knowing and/or willful violations of *47*
26 *U.S.C. § 227 et seq.*, Plaintiff and the Class members are entitled an award of
27 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47*
28

1 *U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).*

2 29. Plaintiff and the Class members are also entitled to and seek
3 injunctive relief prohibiting such conduct in the future.
4

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff requests judgment against Defendant for the following:
7

8 **FIRST CAUSE OF ACTION**

9 **Negligent Violations of the Telephone Consumer Protection Act**
10 **47 U.S.C. §227 et seq.**

- 11
- 12 • As a result of Defendant's negligent violations of *47 U.S.C.*
13 *§227(b)(1)*, Plaintiff and the Class members are entitled to and
14 request \$500 in statutory damages, for each and every violation,
pursuant to *47 U.S.C. 227(b)(3)(B)*; and
 - 15 • Any and all other relief that the Court deems just and proper.

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SECOND CAUSE OF ACTION

**Knowing and/or Willful Violations of the Telephone Consumer Protection
Act
47 U.S.C. §227 et seq.**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C); and
- Any and all other relief that the Court deems just and proper.

Respectfully Submitted this 13th Day of February, 2015.

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By: _____
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